



August 10, 2001

Ms. Karmen Binka
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2001-3502

Dear Ms. Binka:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150562.

The City of San Antonio (the "city") received a request for the civil service personnel file and the "201 personnel file" for a named police officer. You indicate that you have released some of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that the city maintains three files on each of its police officers:

- (1) a Fire and Police Civil Service Commission file, as required by Texas Government Code section 143.089(a); (2) an internal personnel file maintained by the police department, as permitted by Texas Government Code section 143.089(g); and (3) a personnel file maintained by the City's Department of Human Resources.

You indicate that the human resources personnel files on police officers contain "a combination of information contained in the police department's personnel file and the Fire and Civil Service Commission's personnel file." We do not believe that this practice is appropriate in light of section 143.089 of the Local Government Code. Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the fire fighters' or police officers' civil service] or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or the police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor. A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct

....

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Thus, section 143.089 of the Local Government Code provides for the creation of only two personnel files for police officers and fire fighters: one that must be maintained by the city's civil service director or his designee and another that may be maintained by the city's fire and police departments. Section 143.089 does not provide for a third file to be maintained by a city's human resources department. Information contained in the personnel file maintained by the civil service director in accordance with chapter 143, including all records relating to misconduct by fire fighters that resulted in disciplinary action under chapter 143, must be released to the public unless the information comes within one of the Public Information Act's exceptions to required public disclosure. However, information contained in a personnel file held by the police department is confidential pursuant to section 143.089(g) and may not be disclosed under the Act.

You indicate that you have released that portion of the requested information that is also contained in the police officer's civil service file. Therefore, we assume that the information you seek to withhold consists entirely of information that is also contained in the department's personnel file. Consequently, we conclude that you must withhold the submitted information under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.¹ Based on this finding, we need not reach your remaining arguments.

You ask this office whether this ruling may be used to withhold information in similar cases in the future. We decline to issue a previous determination at this time allowing you to withhold any general category of information in the future. *See* Open Records Decision No. 673 (2001). We note, however, that you may withhold the exact same information submitted to this office for the current ruling from a subsequent requestor if the information at issue in the future request is precisely the same information that was submitted to this office in this case pursuant to section 552.301(e)(1)(D) of the Government Code and if the law, facts, and circumstances on which this ruling is based have not changed at the time of the future request. *See id.* at 6.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

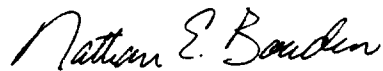
¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 150562

Enc: Submitted documents

c: Ms. Nikki Chargois
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(w/o enclosures)